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SIPDIS

STATE FOR IO/SHA, DRL/MLA, L/HRR

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TAGS: PHUM UNHRC

SUBJECT: COMMUNICATION FROM THE FIVE SRS REGARDING  
INVITATION TO GUANTANAMO AND A PRESS RELEASE

REF: GENEVA 2552 and previous

1. Mission received the following communication from the five Special Rapporteurs regarding the invitation to visit Guantanamo that was extended to Mr. Nowak, Ms. Zerrougui and Ms. Jahangir. The letter and the attachments have been e-mailed to IO/SHA and this communication will be included on #10 on the 2005 correspondence log.

2. Begin text of letter:

31 October 2005

Excellency,

We have the honour to write to you in our respective capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Special Rapporteur on the independence of judges and lawyers, and Special Rapporteur on freedom of religion or belief.

As you will recall, for four years, since November 2001, a number of special procedures mandate holders have been engaged in a dialogue with your Government regarding the situation of suspected terrorists held in Guantanamo Bay Naval Station, Cuba, and other detention facilities. In June 2004, the Annual meeting of special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures and the advisory services programme of the Commission on Human Rights requested us to join our efforts and to continue the dialogue with your Government as a group because the situation under consideration falls under the scope of more than one mandate.

In June 2005, we decided to undertake, within the capacities of our respective mandates, a joint study to determine the situation of detainees in Guantanamo Bay. We have subsequently embarked on a study on the applicability of international human rights law to detention in Guantanamo Bay and on the legal aspects related to this situation. We have also started gathering factual information by various means and will be carrying out interviews with former detainees currently residing in a number of countries.

We were very pleased to have the opportunity to meet Ambassador Michael Kozak, and his colleagues, on Friday 28 October to further discuss our request to visit the detention facilities and detainees held at Guantanamo Bay.

At this meeting, we were especially gratified to learn of your Government's invitation to Mr. Manfred Nowak, Ms. Leila Zerrougui and Ms. Asma Jahangir to visit the facilities in the near future (see the letters of 27th October 2005 from Matthew Waxman, Deputy Assistant Secretary of Defense for Detainee Affairs). While noting that almost four years have passed since the first request to visit Guantanamo Bay, which was made by the Working Group on Arbitrary Detention in early 2002, we very much welcome your Government's invitation to visit the detention facilities in the near future. We also very much appreciate Ambassador's Kozak's assurances of your Government's further cooperation as we prepare our joint report for submission to the Commission on Human Rights.

We regret, however, that, despite the terms of our request, your Government's invitation extends to neither Paul Hunt nor Leandro Despouy. We wish to emphasise that their mandates are integral elements of our joint investigation and their exclusion from your Government's invitation will limit the effectiveness of our joint study.

During our meeting with Ambassador Kozak and his colleagues, we were informed that the visit to Guantanamo Bay could last no longer than one day. In our view, this might be shorter than is necessary for the mandate holders to conduct all the investigations that they wish to make.

Nonetheless, we are all resolved to advance this matter in a

constructive and cooperative spirit.

Accordingly, we are pleased to accept the invitation extended to the three mandate holders and confirm that they are immediately beginning to prepare for their visit in accordance with the standard "Terms of Reference for Fact-finding missions by Special Procedures".

As you may recall, these Terms apply to all Special Procedures' missions to States, including their detention facilities. For your convenience, we attach a copy of these Terms of Reference and note in particular paragraph (b) with its requirement of freedom of inquiry, including:

"(iv) Confidential and unsupervised contact with witnesses and other private persons, including persons deprived of their liberty".

We are aware that, according to the letters of 27 October, the visit to Guantanamo Bay "will not include private interviews or visits with detainees." However, we can find no justification for waiving the requirement of (b)(iv) in relation to the forthcoming visit. Moreover, we have no doubt that if we were to dispense with this requirement in relation to our current investigation, this would have serious negative implications, not only for our present inquiry, but also for investigations that will be conducted by special procedures in relation to other countries in the future.

We are confident you will understand that the integrity and credibility of all special procedures demands that the same standard of unfettered access to detainees is applied to all States, without exception.

On 28th October, Ambassador Kozak and his team invited us to provide a date when the relevant mandate holders could visit Guantanamo Bay. Given their existing commitments, they are in a position to undertake the mission on 6th December 2005.

We would be grateful if your Government confirmed as soon as possible whether or not this is a convenient date for the mission to take place, subject to the standard Terms of Reference.

Please accept, Excellency, the assurances of our highest consideration.

Leila Zerrougui  
Chairperson-Rapporteur of the Working Group on Arbitrary Detention

Paul Hunt  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Leandro Despouy  
Special Rapporteur on independence of judges and lawyers

Asma Jahangir  
Special Rapporteur on freedom of religion or belief

Manfred Nowak  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

End text of letter.

13. Begin text of press release:

UNITED NATIONS  
Press Release GUANTANAMO BAY DETAINEES  
UN human rights experts respond to US invitation  
31 October 2005

The following statement was issued today by the following five independent experts of the United Nations Commission on Human Rights who are undertaking a joint study on the situation of detainees in Guantanamo Bay.

The independent experts are:

Leandro Despouy. Special Rapporteur on the independence of judges and lawyers

Paul Hunt Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Asma Jahangir Special Rapporteur on freedom of religion or belief

Manfred Nowak Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Leila Zerrougui. Chairperson-Rapporteur of the Working Group on Arbitrary Detention

"We welcome the letters of invitation extended to three special procedures on 27 October 2005 by the United States Department of Defense to visit the Department's detention facilities at Guantanamo Bay Naval Station, Cuba.

This invitation is the first tangible result of almost four years of dialogue between the special procedures of the United Nations Commission on Human Rights and the US Government.

While we appreciate the willingness of the US Government to invite three of us, Asma Jahangir, Manfred Nowak and Leila Zerrougui, we deeply regret that similar invitations were not extended to Leandro Despouy and Paul Hunt, that the visit to Guantanamo Bay Naval Station is limited to one day and that private interviews or visits with detainees are explicitly excluded.

We have carefully considered the invitation and decided to accept it on the following basis. In a spirit of cooperation we accept the short duration of the visit and the fact that only three of us will be permitted to visit the facilities. However, we cannot accept the exclusion of private interviews with detainees as this would not only contravene the Terms of Reference for Fact-finding missions by Special Procedures but also undermine the purpose of an objective and fair assessment of the situation of detainees held at the Guantanamo Bay.

We are confident that the US Government, which attaches great importance to the principles of independent and objective fact finding, will understand our position. We have decided that Asma Jahangir, Manfred Nowak and Leila Zerrougui will visit Guantanamo Bay provided that they will have free access to all detainees and the opportunity to carry out private interviews with them. The date envisaged for the visit is 6 December 2005.

Chronology of Requests for Visits regarding detainees at Guantanamo Bay and other locations

Since November 2001, a number of special procedures mandate holders have been engaged in a dialogue with the United States Government regarding the situation of detainees held in Guantanamo Bay. In June 2004 we joined our efforts and decided to continue the dialogue with the US Government as a group because the situation under consideration falls under the scope of more than one mandate. Accordingly, on 25 June 2004, we sent a letter requesting to visit "those persons arrested, detained or tried on grounds of alleged terrorism or other violations, in Iraq, Afghanistan, the Guantanamo Bay military base and elsewhere". Subsequent reminders focusing on a visit to Guantanamo Bay -were sent on 22 November 2004, 21 April 2005 and 31 May 2005 respectively.

By letters dated 9 November 2004 and 20 May 2005 and in a briefing with the US delegation to the Commission on Human Rights, held on 4 April 2005 in Geneva, the United States of America responded by saying that the request "continued to be the subject of intense review and consideration" and that it "has received serious attention and is being discussed at the highest levels of the U.S. Government".

On 23 June 2005, we announced publicly at a joint press conference that, in the absence of a reply, we will join our efforts to undertake, within our capacities of our respective mandates, a study to determine the situation of detainees in Guantanamo Bay. We have subsequently embarked on a study on the applicability of international human rights law to detention in Guantanamo and on the legal aspects related to this situation. We have also begun gathering factual information by various means and we will be carrying out interviews with former detainees currently residing in a number of countries. By letter dated 21 October 2005, we received a detailed response from the US Government to the questionnaire that was submitted by us on 8 August 2005.

On 26 and 28 October, we had further meetings in New York City with US officials from the Defense and State Departments. At the second meeting, we were provided with the three letters of invitation and assurances that the US Government will continue its cooperation with the five independent experts involved in the joint study.

End text of press release.

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